

MINUTES

KENTUCKY WORKERS' COMPENSATION REGULATORY ADVISORY COMMITTEE

November 2, 2022

A meeting of the Regulatory Advisory Committee (RAC) was held on November 2, 2022, at 1:30 p.m. in the Hearing Room at the Department of Workers' Claims, 500 Mero Street, Frankfort, Kentucky, for preliminary comments on potential revisions to 803 KAR 25:010.

Members present in-person were Scott Wilhoit, DWC Commissioner; Doug Gott, Chief Administrative Law Judge; Stephanie Kinney, Administrative Law Judge; Michael Alvey, Chairman, Kentucky Workers' Compensation Board; and attorney Bobby Ferreri.

Members present via Zoom were John Coleman, Administrative Law Judge; and attorneys Mark Knight, Gerald Vanover, Jeff Roberts, Ched Jennings, Kelly Gray, Ken Dietz, and Robert Swisher.

Commissioner Wilhoit welcomed everyone to the meeting. The Commissioner noted that the meeting is held in accordance with KRS 61.823(4)(a), the Open Meetings statute, and that notice of the meeting was published as required. He thanked all the members for participating noting that the discussion has been invaluable and that all comments will be taken into consideration.

The members of the committee introduced themselves. Judge Gott also addressed the group and thanked everyone for giving their time and noted that the committee is expected to complete their overview of the regulation and that there will be plenty of time for comment as the process for addressing the regulation moves forward.

Judge Gott picked up from the end of the last meeting to begin discussions at Section 14. With no concerns of the language in the section, Judge Gott addressed Section 15 saying that if the additional time requested in a motion for extension takes the case beyond its scheduled BRC date, that fact should be recognized and addressed in the motion.

Turning to Section 16, Commissioner Wilhoit asked if there is any thought on subpoenas for medical records. Mr. Jennings noted that he has been having problems with getting doctors to take on workers' compensation cases noting that perhaps the number of subpoenas issued is the problem.

Mr. Knight commented on providers being assigned an index number that were not physicians. Commissioner Wilhoit said that the Department is looking into this because index

numbers should only be licensed physicians and thanked Mr. Knight for bringing the issue to the Department's attention.

Judge Gott then turned discussion to Section 19(4) saying that there will be an editorial revision since the language only refers to "he" and not "he or she."

Mr. Jennings brought attention to the controversy of Zoom vs. in-person hearings. He said that Zoom allows for a speedy resolution of cases. He noted that it more efficient, particularly for injured workers, reduces delays in solving claims, eliminates travel requirements for the injured and the cost of travel to hearing sites which can be several hours away. Mr. Jennings suggested that the hearing sites be closed for budgetary reasons and that money be used for workforce training and other beneficial programs. Another suggestion of Mr. Jennings is that the default should be Zoom unless in-person hearing is absolutely needed.

Mr. Dietz said that he doesn't think we should jeopardize justice over expediency. He noted that judges have control of the room when in-person.

Chairman Alvey turned the discussion to cross-appeal process in Section 22 saying he thought LMS would have eliminated cross-appeals. He also added that parties shouldn't file things that are already in LMS. Commissioner Wilhoit noted that in a brief filed recently had "all parties listed in LMS." Chairman Alvey explained that doesn't tell anyone exactly who the parties are.

Mr. Swisher stated that Section 29 seems to have outlived its purpose and proposed to eliminate it. Judge Coleman confirmed that all of the Kentucky Coal Workers' Pneumoconiosis Fund (KCWP) cases are closed, and that the Section can be eliminated.

Judge Gott then turned the discussion to Section 30 and the forms incorporated for use by that section. He noted that some practitioners have questioned the need to revise the Form 107 because medical experts are confused by the causation question. Mr. Vanover shared that it needs to make it easier for doctors to identify whether hearing loss is chronic or acute.

Commissioner Wilhoit said that the Department has an on-going problem with getting physicians to participate in university evaluations. ENT's are not participating so the Department is thinking that we add audiologists and possibly reaching out to the University of Pikeville in addition to a change stating "accredited medical schools" since we only have two medical schools in Kentucky. Mr. Ferreri stated that he doesn't know the training of audiologists and questioned if they can speak to causation.

Mr. Roberts asked if there was a way to keep briefs from being read by opposing counsel on the simultaneous due date, to prevent the latter-filing attorney from being able to respond to the first brief. John Colston, employee of the Labor Cabinet IT, thinks that ALJs may be able to close and open briefs to keep others from responding to them.

Commissioner Wilhoit informed the group that the Workers' Compensation Nominating Committee will be meeting on 11/8 to address a Workers' Compensation Board vacancy. He also asked that the committee members to look at the website of DWC and offer any input they may have as the Department is redoing the website.

With no other topics to discuss, Judge Gott closed the meeting noting how appreciative he and the Commissioner are for their time and comments they may have.

Meeting was adjourned at 2.56 p.m.